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SUPREME COURT OF APPEALS OF VIRGINIA.

HOPKINS et al. *v.* CITY OF RICHMOND. (No. 1.)COLEMAN *v.* TOWN OF ASHLAND. (No. 2.)

September 9, 1915.

[86 S. E. 139.]

1. Municipal Corporations (§ 600*)—Ordinances—Segregation of Races.—An ordinance making it unlawful for any white person to occupy as a residence any building on any street on which a greater number of houses are occupied as residences by colored people than by white people, and making it unlawful for any colored person to occupy as a residence any house on any street on which a greater number of houses are occupied as residences by white people than by colored people, is constitutional in so far as it applies to persons whose rights as owners or tenants have accrued since the passage of the ordinance, and is invalid only so far as it restricts the right of any white or colored person to move into and occupy property of which he was the owner at the time of the going into effect of the ordinance.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. § 1332; Dec. Dig. § 600.]

2. Municipal Corporations (§ 111*)—Ordinances—Invalidity in Part—Effect.—The invalidity of so much of an ordinance providing for the segregation of the races as limits the right of any white or colored person to occupy property of which he was the owner at the time the ordinance went into effect does not render invalid so much of the ordinance as applies to persons whose rights as owners of tenants accrue since the passage of the ordinance.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 245-256; Dec. Dig. § 111.*]

3. Municipal Corporations (§ 59*)—Powers.—A municipal corporation has the powers granted to it in express words, and the powers necessarily implied or incident to the power expressly granted, and the powers absolutely essential to the declared object and purpose of the municipal corporation, and not simply convenient, but indispensable, and those granted by statute to such corporations generally.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. § 149; Dec. Dig. § 59.*]

4. Municipal Corporations (§ 57*)—Powers—Reasonable Doubt.—Any fair, reasonable doubt of the existence of a power of a municipal corporation is resolved by the courts against the corporation, and the power is denied.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 144, 148; Dec. Dig. § 57.*]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Municipal Corporations (§ 58*)—Powers—Statutory Provisions.—The passage of a statute expressly conferring power on a municipal corporation does not necessarily preclude the pre-existence of the power.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 145-147; Dec. Dig. § 58.*]

6. Municipal Corporations (§ 596*)—Powers—Statutory Provisions—"Police Power."—Under Code 1904, § 1038, conferring on cities and towns the right to preserve the peace and good order within their limits, a town has the implied and incidental power to pass an ordinance segregating the white and colored races, if it tended to promote peace and good order, under the exercise of the "police power," which includes the inherent sovereignty, which is the right and duty of the government, or its agents, to exercise whatever public policy demands for the benefit of society at large, to guard its morals, safety, health, and order, or to insure such economic conditions as an advancing civilization requires.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1323, 1324; Dec. Dig. § 596.*]

For other definitions, see *Words and Phrases*, First and Second Series, *Police Power*.]

7. Municipal Corporations (§ 591*)—Ordinances—Validity—Delegation of Legislative Power.—An ordinance making it unlawful for any white person to occupy as a residence any building on any street on which a greater number of houses are occupied as residences by colored people than are occupied by white people, and making it unlawful for any colored person to occupy as a residence any house on any street on which a greater number of houses are occupied as residences by white people than by colored people, does not depend on any subsequent action or consent of any one, but becomes effective on its passage, and there is no delegation of authority by the legislative body.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. § 1310; Dec. Dig. § 591.*]

8. Municipal Corporations (§ 63*)—Ordinances—Validity—Reasonableness.—Whether an ordinance is unreasonable, and hence void, is for the court; but, in determining the question, it must regard the circumstances of the municipality, and the objects sought to be attained, and the necessity existing for the ordinance.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 155, 1378, 1879; Dec. Dig. § 63.*]

9. Municipal Corporations (§ 625*)—Ordinances—Segregation of Races—Validity.—An ordinance making it unlawful for any white person to occupy as a residence any house on any street on which a greater number of houses are occupied as residences by colored

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

people than are occupied by white people, and making it unlawful for any colored person to occupy as a residence any house on any street on which a greater number of houses are occupied by white people than by colored people, is prospective only in its application, and does not deprive any person of his rights or property existing at the time of its passage.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 1378, 1379; Dec. Dig. § 625.*]

10. Municipal Corporations (§ 600*)—Powers—Preservation of Peace and Health.—A municipal corporation, invested by its charter or by general statute with power to preserve the peace and health, may restrict the use of private property in the interest of the public, providing the restriction is reasonable.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. § 1332; Dec. Dig. § 600.*]

11. Constitutional Law (§ 206*)—Privileges of Citizens.—The fourteenth amendment draws a distinction between a citizen of the United States and a citizen of a state, and classifies the privileges of citizens into those which they have as citizens of the United States and those which they have as citizens of the state wherein they reside, and forbids the abridging of the privileges of a citizen of the United States, but does not forbid the state from abridging the privileges of its own citizens.

[Ed. Note.—For other cases, see *Constitutional Law*, Cent. Dig. §§ 625-648; Dec. Dig. § 206.*]

12. Constitutional Law (§ 278*)—Due Process of Law.—A colored man, who purchased a residence in the district of a municipality set apart by a prior ordinance to white people, cannot assail the ordinance as depriving him of liberty or property without due process of law.

[Ed. Note.—For other cases, see *Constitutional Law*, Cent. Dig. §§ 763, 765, 767-770, 772-777, 779-806, 808-810, 816-824, 907-924, 942; Dec. Dig. § 278.*]

13. Constitutional Law (§ 215*)—Equal Protection of the Laws—Ordinances.—An ordinance providing for the segregation of the races within a municipality does not deny to any person the equal protection of the laws for there is no discrimination between the races, and it operates alike on all persons and property under the same circumstances and conditions.

[Ed. Note.—For other cases, see *Constitutional Law*, Cent. Dig. §§ 714, 716, 717, 719, 721; Dec. Dig. § 215.*]

14. Constitutional Law (§ 48*)—Statutes—Validity.—Any doubt in favor of the validity of a statute must be resolved in favor of validity.

[Ed. Note.—For other cases, see *Constitutional Law*, Cent. Dig. § 46; Dec. Dig. § 48.*]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

15. Municipal Corporations (§ 120*)—Ordinances—Effect.—An ordinance properly enacted has all the force of a law within the limits of the municipality.

[Ed. Note.—For other cases, see *Municipal Corporations*, Cent. Dig. §§ 274-280; Dec. Dig. § 120.*]

16. Municipal Corporations (§ 627*)—Ordinances—Segregation of Races—Validity.—Ordinances providing for the segregation of the races, which are intended to operate as bona fides police regulations are reasonably necessary for that purpose, operate reasonably, and do not unduly interfere with private rights, are constitutional.

[Ed. Note.—For other cases, see *Municipal Corporations*, Dec. Dig. § 627.*]

Error to Hustings Court of Richmond.

Mary S. Hopkins and another, were convicted of violating an ordinance of the City of Richmond, and they bring error. Affirmed.

Error to Circuit Court, Hanover County.

John Coleman was convicted of violating an ordinance of the Town of Ashland, and he brings error. Affirmed.

The ordinance of the city of Richmond is as follows:

"An ordinance (approved April 19, 1911) to secure for white and colored people, respectively, the separate location of residences for each race.

"Be it ordained by the council of the city of Richmond:

"1. That it shall be unlawful for any white person to occupy as a residence or to establish and maintain as a place of public assembly, any house upon any street or alley between two adjacent streets on which a greater number of houses are occupied as residences by colored people than are occupied as residences by white people.

"2. That it shall be unlawful for any colored person to occupy as a residence or to establish and maintain as a place of public assembly, any house upon any street or alley between two adjacent streets on which a greater number of houses are occupied as residences by white people than are occupied as residences by colored people.

"3. That no person shall construct or locate on any block or square on which there is at that time no residence, any house or other building intended to be used as a residence, without declaring in his application for a permit to build, whether the house or building so to be constructed is designed to be occupied by white or colored people, and the building inspector of the city of Richmond shall not issue any permit in such case unless the applicant complies with the provisions of this section.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

"4. That nothing in this ordinance shall affect the location of residences made previous to the approval of this ordinance, and nothing herein shall be so construed as to prevent the occupation of residences by white or colored servants or employees, on the square or block on which they are so employed.

"5. Every person either by himself or through his agent violating, or any agent for another violating, any one or more of the provisions of this ordinance, shall be liable to a fine of not less than one hundred nor more than two hundred dollars recoverable before the police justice of the city of Richmond, and, in the discretion of the police justice, such person may, in addition thereto, be confined in the city jail not less than thirty nor more than ninety days.

"6. This ordinance shall be in force from its passage."

The following is the ordinance of the town of Ashland:

"An ordinance to secure for white and colored people, respectively, the separate location of residences for each race.

"Be it ordained by the council of the town of Ashland, Virginia:

"1. That it shall be unlawful for any white person to occupy as a residence, or to establish and maintain as a school or place of public assembly, any house upon any street or alley between two adjacent streets on which a greater number of houses are occupied as residences by colored people than are occupied as residences by white people.

"2. That it shall be unlawful for any colored person to occupy as a residence, or to establish and maintain as a school or place of public assembly, any house upon any street or alley between two adjacent streets on which a greater number of houses are occupied as residences by white people than are occupied as residences by colored people.

"3. On all streets upon which no house is occupied the color of residence, schools and places of public assembly shall be governed by the adjacent streets, and any person desiring to build on such vacant street shall state whether the house or building so to be constructed is designed to be occupied by white or colored people, and the building committee of the town of Ashland shall not issue any permit in such case unless the applicant complies with the provisions of this section.

"4. That nothing in this ordinance shall affect the location of residences made previous to the approval of this ordinance, and nothing herein shall be so construed as to prevent the occupation of residences by white or colored servants or employees, on the lot on which they are so employed.

"5. Every person either by himself or through his agent violating, or any agent for another violating, any one or more of the provisions of this ordinance, shall be liable to a fine of not

less than twenty nor more than fifty dollars, recoverable before the mayor of the town of Ashland, Virginia, and, in the discretion of the mayor, such person may, in addition thereto, be confined in jail not less than thirty nor more than ninety days.

"6. This ordinance shall be in force from its passage."
In *Hopkins et al. v. City of Richmond*:

A. E. Cohen and *J. R. Pollard*, both of Richmond, for plaintiffs in error.

H. R. Pollard, of Richmond, for defendant in error.
In *Coleman v. Town of Ashland*:

J. R. Pollard, *C. B. Jones, Jr.*, and *Bremner & Basile*, all of Richmond, for plaintiff in error.

Jas. E. Cannon and *H. R. Pollard*, both of Richmond, for defendant in error.

PER CURIAM. These cases are before us on writs of error to judgments of the hustings court of the city of Richmond and the circuit court of the county of Hanover, respectively, maintaining the constitutionality of so-called segregation ordinances of the city of Richmond and the town of Ashland. These ordinances will appear in the official report. The cases involve the same questions, were heard together, and we shall dispose of them accordingly.

[1. 2] We are of opinion that the ordinances are constitutional and valid in so far as they apply to persons whose rights, either as owners or as tenants, have accrued since the enactment of the ordinance. In case No. 1 the plaintiff in error, *Mary S. Hopkins*, is a negro, and the plaintiff in error, *Amedeo Toni*, is a white man. Neither of these parties, however, owns the property, but they were renters of the premises into which each moved as tenant subsequent to the enactment of the city ordinance and in violation thereof. In case No. 2 the plaintiff in error, *John Coleman*, is a negro, and subsequent to the enactment of the ordinance of the town became the owner of and moved into the property affected. The question, therefore, as to the effect of the ordinances upon persons whose *right of occupancy as owners* vested prior to the enactment of the ordinances does not specifically arise in these cases. It is contended, however, that the ordinances are not separable and that all their provisions must stand or fall together. We cannot accept this view, and are of opinion that they are divisible. It is true that sections 1 and 2 of each ordinance employ general terms which apply alike to persons owning property at the time the ordinances take effect and to persons acquiring property thereafter, but the effect is not different from what it would have been if these sections had each been subdivided, so as to embrace in one paragraph persons owning property at the time the ordinance became effective, and

in another paragraph persons subsequently acquiring property. If the ordinances were thus subdivided, and if it be conceded (as we feel constrained to hold) that they cannot be upheld as to property owners whose rights of occupancy had vested at the time of their enactment, then we think it would be perfectly clear under the authorities that we could strike out and disregard the invalid subdivisions and uphold the validity of the remaining sections. *Black v. Trower*, 79 Va. 123, 127; *Trimble v. Commonwealth*, 96 Va. 819, 821, 32 S. E. 786; *Robertson v. Preston*, 97 Va. 296, 300, 301, 33 S. E. 618; *Berea College v. Kentucky*, 211 U. S. 45, 54, 55, 29 Sup. Ct. 33, 53 L. Ed. 81. Nor can we see that the power of the court thus to give effect to one feature of an ordinance when another feature thereof is void can be affected by the mere matter of articulation and phraseology.

In the instant cases in which, as we have seen, no question as to pre-existing rights arises, we have no doubt as to the validity of the ordinances as applied to the plaintiffs in error, and no doubt, therefore, as to the correctness of the judgments complained of.

We are further of opinion that in so far, and only in so far, as the enactments in question limit or restrict the right of any white or colored person to move into and occupy property of which he was the owner at the time such enactments went into effect, they are beyond the police power of the municipalities and are invalid and inoperative. While it is true, as claimed by counsel for defendants in error, that the ordinances "do not move a single negro or a single white person from the home in which they may be living at the time of" their enactment, it is also true that their provisions are broad enough to prohibit both white and colored persons who own, but do not occupy, property at the time they take effect from thereafter, at their pleasure, moving into and personally occupying and enjoying the same. It is this latter result which we think the ordinances cannot lawfully bring about, and it is in this respect, and in this only, that we do not concur in the effect of the opinion of the circuit court hereinafter set out in full.

As already indicated, the particular retrospective effect of the enactments under consideration which we have condemned is not specifically involved in the judgments before us. We have dealt with this feature of the ordinances, however, because it is so closely related to the contention that they must be sustained or annulled as a whole, and because all the questions involved are of such general and public concern, as that we deemed it proper to express fully our conclusions upon the whole subject.

In a written opinion in case No. 2, the judge of the circuit court of Hanover county has fully discussed the principles in-

volved in these cases, except in so far as that opinion may be construed to hold that the provisions of these ordinances may deny to persons who have acquired title to real estate prior to the enactment of the ordinances the right thereafter personally to enjoy and occupy the same.

In addition to the authorities referred to by the judge of the circuit court of Hanover county, we will add at the foot of his opinion a reference to certain other authorities which in our opinion tend to elucidate the important questions involved and to sustain the judgments under review.

[The opinion here quoted is printed in full in 19 Va. Law Reg. 427.]

Additional authorities for the following propositions:

1. That the councils of the city and town had power to enact the segregation ordinances: 2 McQuillin, Mun. Corp. § 724, p. 1570; 2 Dillon, Mun. Corp. § 600; 3 McQuillin, Mun. Corp. § 895, p. 1899; *L. & N. R. R. Co. v. Kentucky*, 161 U. S. 677, 16 Sup. Ct. 714, 40 L. Ed. 849; *Elsner Bros. v. Hawkins*, 113 Va. 47, 73 S. E. 479, Ann. Cas. 1913D 1278.

And as to the city of Richmond, see, also, City Charter, §§ 19. 19x, 20.

2. As to the reasonableness of the terms of the ordinances: McQuillin, Mun. Ordinances, §§ 186, 432; McQuillin, Mun. Corp. § 732; *Childs v. C. & O. R. Co.*, 218 U. S. 71, 77, 30 Sup. Ct. 667, 54 L. Ed. 936, 20 Ann. Cas. 980; *Schmidinger v. Chicago*, 226 U. S. 578, 33 Sup. Ct. 182, 57 L. Ed. 364, Ann. Cas. 1914B 284; *Adams v. Milwaukee*, 228 U. S. 572, 581, 33 Sup. Ct. 610, 57 L. Ed. 971.

3. As to constitutionality and validity: *Louisville v. Miss.*, 133 U. S. 587, 10 Sup. Ct. 348, 33 L. Ed. 784; *Hall v. De Cuir*, 95 U. S. 485, 24 L. Ed. 547; *Berea College v. Kentucky*, 211 U. S. 45, 29 Sup. Ct. 33, 53 L. Ed. 81; *McCabe v. Atchison, T. & S. Ry. Co.*, 235 U. S. 151, 35 Sup. Ct. 69, 59 L. Ed. —.

Segregation ordinances more or less similar to those involved in the instant cases, have been passed upon by the courts of last resort in Maryland, North Carolina, Georgia, and Kentucky in the following cases, not cited in the foregoing opinion or list of authorities, to wit: *State v. Gurry*, 121 Md. 534, 88 Atl. 546, 47 L. R. A. (N. S.) 1087, Ann. Cas. 1915B 957; *State v. Darnell*, 166 N. C. 300, 81 S. E. 338; *Carey v. City of Atlanta (Ga.)*, 84 S. E. 456; *Harris v. City of Louisville (Ky.)*, 177 S. W. 472. In each of the first three of these cases the particular ordinance involved was declared invalid, and in the last one its validity was upheld. The Maryland and Georgia cases, as we conceive, support the conclusion here reached. All four of these cases are reviewed, as are a number of other pertinent authorities, in a recent comprehensive article on "Segregation Ordinances," by

the associate editor of the Virginia Law Register. 1 Va. Law Reg. (N. S.) pp. 330-356.

[16] In conclusion, the writer of the above article, in part, aptly observes:

"Segregation ordinances, which are intended to operate as bona fide police regulations, are reasonably necessary for that purpose, operate reasonably, and do not unduly interfere with private rights, are constitutional.

"The bona fides of these ordinances cannot be made a serious question in law or economy. The different cities have striven to do a public good, and have not been actuated merely by race prejudice. The truth is these ordinances are a natural outgrowth of existing conditions, and are in the most instances intended to preserve such conditions by preserving present separate residences and preventing one race encroaching upon the other. The ordinances are intended to protect each race from harm from the other."

Judgments affirmed.

Note.

As stated in the opinion "Segregation Ordinances" is the subject of an article in a previous issue of the Law Register.

Under notes of important decisions the Central Law Journal contains the following comment upon the principal case:

"The reasoning for the conclusion reached is found in an opinion by the trial court, adopted in full by the Appeals Court and this opinion is supplemented by the citation of additional authority.

"The general theory is that police power rightly exercised governs rights to property and the exercise of privileges inhering in citizenship, provided only that a statute or an ordinance rests upon classification that is reasonable and the object sought pertains to public health, peace and morality. That a segregation ordinance relates to the preservation of peace, at least, is shown by sustaining statutes as to separation of the races in public conveyances and in schools. As to alleged discrimination based on supposed inferiority of one race above the other it was said long ago by the Federal Supreme Court, that: "If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction on it." *Plessy v. Ferguson*, 163 U. S. 537, 41 L. ed. 256. Whether such an answer seems very conclusive or not, it is certain that our Supreme Court so regarded it.

"Several rulings passing on precisely similar ordinances are cited, viz., *State v. Gurry*, 121 Md., 534, 88 Atl. 546, 47 L. R. A. (N. S.) 1087, Ann. Cas., 1915B 597; *State v. Donnell*, 166 N. C. 300, 81 S. E. 338; *Casey v. City of Atlanta*, 84 S. E. 456, all of which rejected the ordinances, but the Virginia court says all of them support it in principle. As a ruling holding such an ordinance valid there was cited *Harr's v. City of Louisville (Ky.)*, 177 S. W. 472.

"It seems quite impossible to distinguish segregation legislation as to residence from that for separation of races in public conveyances and schools. If there is the purpose of preserving peace and order as to the latter, *a fortiori* is such a purpose legitimate as to the former and the right to use of property is certainly circumscribed in many ways as the advantage of civilized society may demand."—Central Law Journal (October 22, 1915) vol. 81, p. 290.